

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3124 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ARVIND CHUNIBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MRS DT SHAH for Petitioner

MR SR DIVETIA for Respondent No. 1

MS MAMTA VYAS for Respondents No.2, 3, 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11/08/97

ORAL JUDGEMENT

1. This petition has been filed by the petitioner, an employee of the District Panchayat, Surendranagar and prayer has been made therein for direction to the respondents to absorb him as a permanent work-charged Clerk and to further confer to him the benefits of the circular dated 17th October, 1988.

2. The petitioner was admittedly taken on daily wages by the respondent-Panchayat in the year 1982 and he is working for all these years in the same capacity. The Government has issued a circular dated 17th October, 1988, under which certain benefits have been conferred to the daily wage employees in the different departments.

3. The learned counsel for the petitioner contended that the petitioner is also entitled for the benefits conferred under the circular dated 17th October, 1988 as the petitioner is an employee of the Panchayat and the employees of Panchayat are held to be civil servants by the Hon'ble Supreme Court in the case of R.K. Soni. It has next been contended that in pursuance of the Government resolution dated 30th October, 1991 as many as ten employees of the respondent-Panchayat have been given the benefit of the pay scale in the regular pay scale under the order dated 20th February, 1992, but that benefit has not been given to the petitioner. A copy of this order has been submitted on the record of this special civil application.

4. On the other hand, the counsel for the respondents No.2, 3 and 4 though does not dispute that the petitioner is working on daily wages since 1982, but what she has contended is that the benefits of the circular dated 17th October, 1988 are not available to the petitioner. This circular is only applicable to the daily wage Government employees and not the Panchayat employees. So far the other contention of the counsel for the petitioner of giving of the benefits of the circular dated 30th October, 1991 is concerned, the counsel for the respondent-Panchayat submitted that, that has been ordered on the basis of the facts of that case and on the basis of which no parity can be claimed by the petitioner.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

6. It is true that the circular dated 17th October, 1988 is of the Government and the petitioner has not produced anything on record to show that this circular has been accepted by the District Panchayat. However, under the order dated 20th February, 1992, ten daily wage employees of the respondent-Panchayat were given the benefit of the circular dated 30th October, 1991, which was a Government circular. So it is not correct to say on the part of the respondent-Panchayat that the Government circular are only applicable to the Government employees. Though none of the parties have produced on

record the circular dated 30th October, 1991, but reference of same is there in the order dated 20th February, 1992.

7. This special civil application is disposed of with the direction to the respondents No.2, 3 and 4 to consider the case of the petitioner to give him the pay in the regular pay scale etc. in the light of the Government circular dated 30th October, 1991 reference of which has been given in the order dated 20th February, 1992 under which ten daily wage employees have been given the benefit.

8. It is really sorry state of affairs that the respondent-District Panchayat makes the appointment on daily wages or on adhoc or temporary basis and that appointments continue for years. These appointments are made dehors of rules and in this case, the counsel for the respondents No.2, 3 and 4 contended that these are only the back-door entries. But the larger question is who were the persons who permitted these back-door entries. It is really shocking that those persons, who had made all those bungling were not taken to task whereas these poor persons who are in need of the employment, have been after many years still continued on daily wages and they all the time have the apprehension of termination of their services. By working for years together in the respondents' office many of the employees have manifold aspirations and they also get settled in life. In such matters though technically there may be difficulty of giving the direction by this Court of regularisation of their services, but still after 15 years of their working whether they should be sent back home or they should be allowed to work only as daily wagers may be a point for consideration. However, this point is not required to be gone into and I have not gone into in this matter as the Government has passed the resolution on 17th October, 1988 and further resolutions on the subject of giving of the benefits of the pay scale and other benefits to the daily wagers and the respondent-Panchayat has adopted one of the circulars of the Government as it comes out from its order dated 20th February, 1992. It is true that these daily wagers do not acquire any right and they may not be justified to claim the parity in the employment also with permanent employees, but the respondents have created all these problems for these poor persons, and that may be the reason that the Government has taken a decision to confer the benefits to the daily wagers who have been appointed on or before 1st October, 1988. But still in case the respondents are not warned not to make

the appointments on daily wages or on adhoc or temporary basis in future then certainly they will go on creating the problems. There is wholesome unemployment in the country and people are in need of employment and they accept the employment on any conditions whatsoever.

9. In view of this fact, I consider it to be appropriate to restrain the respondent-District Panchayat and its officers from making any appointment on daily wages or on adhoc or temporary basis. All the appointments on the posts available in the office of the respondents No.2, 3 and 4 should be made as per the rules of recruitment. If in emergency, any appointment has to be made then that appointment should be made only for two months with clear condition that it is only a temporary appointment, and thereafter it should not be continued. In the meanwhile, all the steps should be taken to make the regular appointment. The Special Civil Application and Rule therein stand disposed of in the aforesaid terms with no order as to costs.

zgs/-